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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/549,988	04/14/2000	Jeffrey M. Chasen	109905-134328	8258

25943 7590 12/10/2004

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EXAMINER

BOCCIO, VINCENT F

ART UNIT	PAPER NUMBER
2616	

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

05

Office Action Summary

Application No.

09/549,988

Applicant(s)

CHASEN, JEFFREY M.

Examiner

Vincent F. Boccio

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on RCE 11/4/04.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 49,52 and 62-83 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 49,52 and 62-83 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

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DETAILED ACTION

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 2616.

Response to Arguments

1. Applicant's arguments with respect to amended claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Objections

2. Claim 27 is objected to because of the following informalities:

{A} Claim 67 recites "a local storage device", while claim 49 recites, "a storage", the examiner suggests to amend claim 27 to,

"wherein the storage, is a local storage device".

Appropriate correction is required.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the

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examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

2. Claims 49, 52, 62-83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shinada (US 5,436,875) in view of Inokuchi (US 5,414,688).

Regarding claim 49, Shinada discloses and meets the limitations of a method comprising:

- incrementally storing the first audio data **on a storage medium (Fig. 1, "disc 2")**;
- starting at a first point corresponding to a beginning (met by the/a starting location, recording the received, audio in a file on the disc/cd);
- wherein the first audio being received at a first rate (to disc 2, rate from memory 18 to CD 2, stored to the disc 2, at a first rate which is higher than the playback rate (col. 6, recording rate = 1.4 M bits/sec, while the incoming or playback rate is rate = .3 M bits/sec); and
- incrementally playing at least some of the stored first audio data at a playback rate slower than the first rate, prior to completion of the storing of all the first audio stream (Fig. 6 A-D, col. 11, "contents of the recording program can be listened from the beginning although the recorded program has not been completed.").
- receiving from a optical disk player (Fig. 1), a first audio stream originating from a first audio disk file (disk 2, col. 7, "audio signal S2").

Further regarding claim 49, Shinada fails to particularly disclose receiving from an optical disc or a disc type media and corresponding player the recited first audio data streamed from a optical disc file being processed by an optical disc player or

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in other words that the source of audio is from an optical disc, as a source, to be received incrementally stored and played, wherein the storage being separate and distinct from the audio optical disc and player device, as recited.

Inokuchi teaches in Figs. 4 & 11, etc, an optical disc or CD-ROM or compact disc player (Fig. 11), with a reading unit or a head for reproducing, the stored an audio data in a file having a format (col. 1, "a predetermined format", col. 2, CD ROM being an optical, "Write once optical disc", type), thereby being a source of audio data thereby mastering to another storage type disc (CD 14) from the optical disc and player, wherein the storage (recording device of Fig. 12, storage 16) being separate and distinct from the audio optical disc file as well as the optical disc player device, as taught by Inokuchi.

Therefore, it would have been obvious to one skilled in the art at the time of the invention to modify Shinada by incorporating a source being an optical disc media and player, as is deemed to be an obvious alternative, source of audio data, as taught by Inokuchi.

Regarding claims 62-63, the combination further meets the limitations of wherein the first rate (recording to the head rate which is 1.4 M Bits/sec, memory 18 to disc 2) which is greater than real time (met by {.3 M bits/sec}), wherein the playing is performed in real time (playback at real time or {.3 M bits/sec}, from buffer 22 to output 26).

Regarding claims 64-65, the combination as applied further meets the limitations of:

0 encoding the audio (first and second), as they are received, prior to being stored, wherein the first audio is received encoded and stored at a rate that is greater than real time (Shinada, received by encoder 14 and stored by disc 2 at the 1.4 M bits/sec rate, from memory 18), wherein upon a reproduction operation playing at a real time rate (from 22 to port 26, to a speaker at the real time rate or speed).

Regarding claim 66 Shinada further comprises:

- stopping the receiving and storing at a second point (from 18 to 2), within the audio optical disk file (met by a

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point in the audio data, which the recording to media 2 is stopped);

- receiving from the optical disk player device (Inokuchi, source 11), a second audio data stream originating from the first audio optical disk file (met by the point wherein the storage to disc 2 stopped (first section of data), wherein after receiving the first audio or section of data, from the source being the optical disc player, the second audio data or section, follows the first section which is transferred between source {11} to destination {2} (see Inokuchi, met by optical disc 11);
- incrementally playing at least some of the stored first and second audio data, prior to completion of the storing of the second or even the first (met by the combination as applied).

Regarding claims 67-68, Shinada further meets the limitations of:

- wherein the first audio is incrementally stored to a local storage device (2), as an electronic data file; and
- storing the second audio data to the same local storage device, as part of the same file (met by recording the first duration, thereafter recording the second).

Regarding claims 69-70, Shinada further meets the limitation of having META data (col. 4, U-TOC, allows reproduction of areas corresponding to user's selection) and wherein the optical disk meets the limitation of a compact disk or CD.

Regarding claims 71 and 80, Shinada further meets the limitation of storing with one of a plurality of digital encoding formats (Fig. 1, "encoder 16 and decoder 24", col. 6, "encoder 16 audio compression processing ... according to a prescribed format", representing audio compression and decompression, inherently according to a standard), wherein the system performs identifying by knowing the encoding and therefore knows the proper decoding to use.

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Shinada fails to particularly mention identifying within, one of encoding formats of the audio stream of data encoded.

The examiner takes official notice that providing ID information to identify the encoding (compression standard etc.....) method, is well known and obvious, therefore, it would have been obvious to one skilled in the art at the time of the invention to modify the Shinada to provide an ID with respect to the compression format or standard used, thereby upon reproduction to select and properly decode the compression audio data, as is well known to those skilled in the art.

Claims 52, 72-83 are analyzed and discussed with respect to the claims above,

further as applied the combination fails to particularly disclose a CPU, by, merely a controller for performing the steps, therefore, fails to disclose the limitations of a computer readable medium, or a program with instructions for performing the operation of the system.

The examiner takes official notice that providing a control program on a computer readable medium allowing a CPU to control the system or software implementation of the operation even encoding and decoding is well known and obvious to those skilled in the art, therefore, it would have been obvious to those skilled in the art at the time of the invention to implement the system with a computer readable medium, wherein software has an advantage of upgrading only involves a new program, not as simple with a hardware implementation, wherein each does have their own advantages.

Contact Fax Information

Any response to this action should be mailed to:

Commissioner of Patents and Trademarks
Washington, D.C. 20231

or faxed to:

(703) 872-9314, (for formal communication
intended for entry)

or:

(703) 308-5359, (for informal or draft communications,
please label "PROPOSED" or "DRAFT")

Hand-delivered responses should be brought to Crystal
Park II, 2121 Crystal Drive, Arlington, VA., Sixth
Floor (Receptionist).


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Contact Information

Any inquiry concerning this communication or earlier communications should be directed to the examiner of record, Monday-Thursday, 8:00 AM to 5:00 PM Vincent F. Boccio (703) 306-3022.

Any inquiry of a general nature or relating to the status of this application should be directed to Customer Service (703) 306-0377.

Primary Examiner, Boccio, Vincent
12/6/04


VINCENT BOCCIO
PRIMARY EXAMINER